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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 553

[NHTSA-2013-0042]

RIN 2127–AL32

Direct Final Rulemaking Procedures

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: NHTSA is proposing to establish direct final rulemaking (DFR) procedures for use in adopting amendments to its regulations on which no adverse public comment is expected by the agency. Under these procedures, NHTSA would issue a direct final rule adopting amendments that become effective a number of days (specified in the rule) after the date of publication of the rule in the Federal Register, unless NHTSA receives written adverse comment(s) or written notice of intent to submit adverse comment(s) by the specified date. Adoption of these new procedures would expedite the promulgation of routine and noncontroversial rules by reducing the time and resources necessary to develop, review, clear and publish separate proposed and final rules. NHTSA would not use direct final rule procedures for complex or controversial issues.

DATES: Written comments must be received by [insert 60 days after publication]. Comments received after that date will be considered to the extent possible.

ADDRESSES: Docket: For access to the docket to submit comments, read background documents including those referenced in this document, or to read comments received, go to

<http://www.regulations.gov> and search by Docket ID number NHTSA-2013-0042 at any time.

Follow the online instructions for submitting comments. For hand delivery of comments, go to the ground floor, room W12-140, DOT Building, 1200 New Jersey Avenue, SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's (DOT) complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19476) or you may visit <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Lily Smith, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590; Telephone: (202) 366-2992.

I. SUPPLEMENTARY INFORMATION:

Background

On January 30, 2004, the Office of the Secretary of Transportation (OST) published a final rule establishing DFR procedures¹ in order to expedite the process for non-controversial actions within that office. Several operating administrations within DOT have since established their own DFR procedures.² NHTSA believes similar provisions would be useful to its rulemaking activities.

Notice and comment rulemaking procedures are not required under the Administrative Procedure Act (APA) (5 U.S.C. 553) when an agency has good cause not to use them, such as

¹ 69 FR 4455.

² See 70 FR 67318 (FTA), 72 FR 10086 (FRA), and 75 FR 29915 (FMCSA).

when they would be unnecessary.³ NHTSA is proposing to use the DFR process when the action to be taken is not anticipated to generate adverse comment, and therefore, providing notice and opportunity for comment would not be necessary. NHTSA believes this procedural option would expedite the issuance of, and thereby save time and agency resources on, rules that are not controversial.

NHTSA would not use direct final rule procedures for complex or controversial issues.

Procedure for Direct Final Rulemaking

NHTSA proposes to use the DFR process for rules that the agency determines are not controversial and therefore unlikely to receive adverse comment. The agency anticipates that it would be able to make this determination based on experience with prior rulemakings and/or technical or policy assessments of the likely impacts of the rule, if any. NHTSA would consider a comment to be adverse if it were critical of the rule's adoption or any provision of the rule, or suggested a change to the rule. NHTSA would not consider frivolous or irrelevant comments to be adverse. NHTSA would also not consider a comment recommending additional actions or changes to be adverse, unless the comment also stated why the DFR would be ineffective without the additional action or change.

NHTSA anticipates that a DFR might be appropriate when the agency seeks to make the following types of changes: 1) non-substantive amendments, such as clarifications or corrections, to an existing rule; 2) updates to existing forms or rules, such as incorporations by reference of the latest technical standards; 3) changes affecting NHTSA's internal procedures, such as filing requirements and rules governing inspection and copying of documents; 4) minor substantive rules or changes to existing rules on which the agency does not expect adverse comment.

³ 5 U.S.C. 553(b)(B). Good cause may also exist where notice and comment procedures would be impracticable or contrary to the public interest.

If NHTSA decided a DFR is the appropriate procedure for an action, the agency would publish the final rule in the Federal Register. The preamble to the rule would describe the specific actions the agency is taking, along with any anticipated impacts, and explain why the agency does not expect adverse comment to those actions. The preamble would state that unless written adverse comment or written notice of intent to submit adverse comment were received, the rule would become effective on the date specified after publication in the Federal Register.

NHTSA would provide sufficient time to allow for public comment on its DFRs. NHTSA anticipates that it would allow 30 days for submission of an adverse comment (or statement of intent to submit an adverse comment) on a DFR, and that a DFR would go into effect 60 days after publication in the Federal Register. NHTSA might use a longer comment period, or a longer time between publication and the effective date, if the agency determined that it was necessary.

If either written adverse comment or written notice of intent to submit adverse comment were received, NHTSA would withdraw the DFR either in whole or in part (i.e., with respect to those parts on which adverse comment was received). If the agency decided to pursue further a provision on which adverse comment was received, the agency would publish a subsequent notice of proposed rulemaking in the Federal Register and provide another opportunity for comment on that provision.

If no adverse comment or notice of intent to submit adverse comment were received on the DFR, NHTSA would publish another Federal Register notice, generally within 15 days after the comment period closes, indicating that the DFR did not receive adverse comment and would become effective on the specified date.

NHTSA believes that the time and resources that would be involved in withdrawing a DFR in whole or part and issuing a subsequent notice of proposed rulemaking with a second comment period would induce the agency to evaluate carefully whether the DFR process is appropriate for a given action.

In accordance with the above, NHTSA is proposing to also amend 49 CFR Sections 553.14 and 553.23, which describe the content specifications and consideration of comments for proposed rules, to apply to direct final rules. This would ensure that direct final rules provide the same level of notice and consideration of public input as would a proposed rule.

Statutory and Executive Orders

Executive Orders 12866 and 13563

NHTSA has determined that this action is not a significant regulatory action under Executive Orders 12866 and 13563, or under the Department's Regulatory Policies and Procedures. There are no costs associated with the proposed rule. There would be some cost savings in Federal Register publication costs and efficiencies for the public and NHTSA personnel in eliminating duplicative reviews.

Regulatory Flexibility Act

NHTSA certifies that this rule, if adopted, would not have a significant impact on a substantial number of small entities.

Executive Order 13132

NHTSA does not believe that there would be sufficient federalism implications to warrant the preparation of a federalism assessment.

Paperwork Reduction Act

The proposed rule does not contain any information collection requirements under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Unfunded Mandates Reform Act of 1995

NHTSA has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For more information on DOT's implementation of the Privacy Act, please visit: <http://www.dot.gov/privacy>.

List of Subjects in 49 CFR part 553

Rulemaking Procedures

For the reasons set forth in the preamble, the National Highway Traffic Safety Administration proposes to amend 49 CFR part 553 of the Code of Federal Regulations as follows::

PART 553—RULEMAKING PROCEDURES

1. The authority citation is revised to read 49 U.S.C. 322, 1657, 30103, 30122, 30124, 30125, 30127, 30146, 30162, 32303, 32502, 32504, 32505, 32705, 32901, 32902, 33102, 33103, and 33107; delegation of authority at 49 CFR 1.95.

2. Add § 553.14 to Subpart B to read as follows:

§ 553.14 Direct final rulemaking

If the Administrator, for good cause, finds that notice is unnecessary, and incorporates that finding and a brief statement of the reasons for it in the rule, a direct final rule may be issued according to the following procedures.

(a) Rules that the Administrator judges to be non-controversial and unlikely to result in adverse public comment may be published as direct final rules. These may include rules that:

(1) Are non-substantive amendments, such as clarifications or corrections, to an existing rule;

(2) Update existing forms or rules, such as incorporations by reference of the latest technical standards;

(3) Affect NHTSA's internal procedures, such as filing requirements and rules governing inspection and copying of documents;

(4) Are minor substantive rules or changes to existing rules on which the agency does not expect adverse comment.

(b) The Federal Register document will state that any adverse comment or notice of intent to submit adverse comment must be received in writing by NHTSA within the specified time after the date of publication of the direct final rule and that, if no written adverse comment or written notice of intent to submit adverse comment is received in that period, the rule will become effective a specified number of days after the date of publication of the direct final rule.

(c) If no written adverse comment or written notice of intent to submit adverse comment is received by NHTSA within the specified time after the date of publication in the Federal Register, NHTSA will publish a notice in the Federal Register indicating that no adverse comment was received and confirming that the rule will become effective on the date that was indicated in the direct final rule.

(d) If NHTSA receives any written adverse comment or written notice of intent to submit adverse comment within the specified time after publication of the direct final rule in the Federal Register, the agency will publish a notice withdrawing the direct final rule, in whole or in part, in the final rule section of the Federal Register. If NHTSA decides to proceed with a provision on which adverse comment was received, the agency will publish a notice of proposed rulemaking in the proposed rule section of the Federal Register to provide another opportunity to comment.

(e) An “adverse” comment, for the purpose of this subpart, means any comment that NHTSA determines is critical of any provision of the rule, suggests that the rule should not be adopted, or suggests a change that should be made in the rule. A comment suggesting that the policy or requirements of the rule should or should not also be extended to other Departmental programs outside the scope of the rule is not adverse.

3. In §553.15, revise paragraphs (a), (b)(1) and (b)(3) to read as follows:

§ 553.15 Contents of notices of proposed rulemaking and direct final rules

(a) Each notice of proposed rulemaking, and each direct final rule, is published in the Federal Register, unless all persons subject to it are named and are personally served with a copy of it.

(b) * * *

(1) A statement of the time, place, and nature of the rulemaking proceeding;

* * * * *

(3) A description of the subjects and issues involved or the substance and terms of the rule;

* * * * *

4. Revise § 553.23 to read as follows:

§ 553.23, Consideration of comments received

All timely comments are considered before final action is taken on a rulemaking proposal or direct final rule. Late filed comments will be considered to the extent practicable.

Issued in Washington, DC on _____,
under authority delegated in 49 CFR part 1.95

Christopher J. Bonanti
Associate Administrator for Rulemaking

Billing Code: 4910-59-P

